

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
VSS ENTERPRISES, LLC)
)
Licensee of Station KNNF731, Las Vegas, Nevada)

ORDER OF MODIFICATION

Adopted: July 2, 2003

Released: July 3, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order of Modification*, we modify the license for trunked Business Radio Service Station KNNF731, Las Vegas, Nevada, held by VSS Enterprises, LLC (VSS). Specifically, we modify VSS's license by deleting frequency pairs of 896/935.8875 MHz and 899/938.4125 MHz. As explained in further detail below, we take this action pursuant to earlier orders proposing to modify VSS's license for frequency pairs 896/935.8875 MHz¹ and 899/938.4125 MHz.²

2. *Background.* In 1997, the FCC consented to and granted an assignment/modification application to assign the license for Station KNNF731 from Gold Coast Hotel and Casino to Showboat Operations, Inc. (Showboat), and to relocate the transmitter. While the modified license correctly listed the transmitter's new street address, there was a typographical error with respect to the geographic coordinates. Specifically, the requested latitude was 36-09-19 North, but the modified license listed the latitude as 39-09-19 North, a difference of approximately two hundred miles. The error resulted in the frequencies assigned to Station KNNF731 – namely, 898/937.4500 MHz, 899/938.4125 MHz, and 899/938.4250 MHz -- appearing to be unassigned in the Las Vegas area. In July 2000, the FCC consented to the assignment of the license for Station KNNF731 from Showboat to VSS. On October 4, 2000, the FCC granted ReadyMix, Inc. (ReadyMix) a license to operate Station WPRI751, Las Vegas, Nevada, on frequency pair 899/938.4125 MHz, at a site approximately six miles from the actual site of Station KNNF731.

3. On September 20, 2001, VSS filed an application to modify its license for Station KNNF731 to correct the latitude and to add frequency pair 896/935.8875 MHz.³ On January 22, 2002, the Public Safety and Private Wireless Division (Division), Licensing and Technical Analysis Branch granted VSS's modification application. On February 8, 2002, the Industrial Telecommunications Association, Inc. (ITA) requested rescission of the grant.⁴ ITA argued that the grant was improper with respect to frequency pair 899/938.4125 MHz because VSS's requested location is too close to the

¹ See Industrial Telecommunications Association, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 1919 (WTB PSPWD 2003) (*VSS-AAR Order*).

² See VSS Enterprises, LLC, *Memorandum Opinion and Order*, 18 FCC Rcd 6225 (WTB PSPWD 2003) (*VSS-ReadyMix Order*).

³ FCC File No. 0000598897 (filed Sept. 20, 2001, amended Oct. 4, 2001 and Jan. 15, 2002).

⁴ Letter from Ronald G. Franklin, Director, Spectrum Operations and Analysis, ITA, to Mary Shultz, Federal Communications Commission (received Feb. 8, 2002).

authorized site of ReadyMix's Station WPRI751, and improper with respect to frequency pair 896/935.8875 MHz because the frequency pair already had been assigned to the American Association of Railroads (AAR) for nationwide geographic use.⁵ On March 6, 2002, VSS filed a response in which it conceded that assignment of the AAR frequency pair was improper.⁶

4. On December 2, 2002, the Division sent a letter to ITA, which coordinated ReadyMix's application for Station WPRI751, and the Personal Communications Industry Association (PCIA), which coordinated VSS's application for Station KNNF731.⁷ The Division asked the coordinators, pursuant to Sections 90.173, 90.175, and 90.176(h) of the Commission's Rules,⁸ to determine whether the two stations could coexist at their current locations without unacceptable interference resulting, and, if not, what modification(s) of either or both licenses would minimize or eliminate such interference, with the least impact on the operations of the licensee(s).⁹ On December 20, 2002, PCIA responded that additional time was needed to determine whether the two stations could coexist, because VSS had not been fully utilizing frequency pair 899/938.4125 MHz.¹⁰ PCIA also stated that VSS was willing to compromise on its authorized technical parameters in order to reach an equitable solution to the matter,¹¹ but that developing such a solution would require "real world testing."¹² On February 13, 2003, ITA informed the Division that no testing had taken place, and that VSS had commenced full-power full-time operations on frequency pair 899/938.4125 MHz, resulting in substantial interference to ReadyMix's operations.¹³ ITA reiterated its request that VSS's authorization to use frequency pair 899/938.4125 MHz be rescinded.¹⁴

5. In a *Memorandum Opinion and Order* released February 14, 2003, the Division proposed to modify VSS's license pursuant to Section 316 of the Communications Act of 1934, as amended (the Act),¹⁵ by deleting frequency pair 896/935.8875.¹⁶ We agreed with ITA and VSS that frequency pair 899/938.4125 MHz should not have been assigned to Station KNNF731 because VSS's operations are within AAR's protected zone, and VSS did not obtain AAR's concurrence.¹⁷

⁵ *Id.* at 1-2 (citing Petition of Association of American Railroads (AAR) for Modification of Licenses for Use in Advanced Train Control Systems and Positive Train Control Systems, *Order*, 16 FCC Rcd 3078 (WTB PSPWD 2001)). ITA also challenged grant of the modification application with respect to frequency pairs 898/937.4500 MHz and 899/938.4250 MHz. The issues regarding those frequency pairs have been resolved. *See* Sunset Bus and Commercial, Inc., *Order*, 18 FCC Rcd 1815, 1817 ¶ 6 (WTB PSPWD 2003).

⁶ VSS Opposition to Petition for Reconsideration at 1 (filed Mar. 6, 2002).

⁷ Letter dated Dec. 2, 2002 from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, to Industrial Telecommunications Association and Personal Communications Industry Association (Division Letter).

⁸ 47 C.F.R. §§ 90.173, 90.175, 90.176(h).

⁹ Division Letter at 1-2.

¹⁰ Letter dated Dec. 20, 2002 from Don Andrew, Personal Communications Industry Association, to D'wana R. Terry, Chief, Public Safety and Private Wireless Division.

¹¹ *Id.* at 1.

¹² *Id.*

¹³ Letter dated Feb. 13, 2003 from Ronald G. Franklin, Industrial Telecommunications Association, to Peter Waltonen, Public Safety and Private Wireless Division.

¹⁴ *Id.* at 2.

¹⁵ 47 U.S.C. § 316.

¹⁶ *VSS-AAR Order*, 18 FCC Rcd at 1920 ¶ 4.

¹⁷ *Id.* at 1920 ¶ 3.

6. In a *Memorandum Opinion and Order* released April 4, 2003, the Division proposed to modify VSS's license pursuant to Section 316 of the Act by deleting frequency pair 899/938.4125 MHz.¹⁸ We concluded that, in light of the totality of the circumstances, such an action would serve the public interest by preserving the existing coverage areas of VSS and ReadyMix and preventing harmful interference, while not unduly disrupting VSS's operations, as VSS has two additional frequency pairs on which to continue operation.¹⁹

7. *Discussion.* A copy of each *Memorandum Opinion and Order* was sent by certified mail, return receipt requested to VSS with the requirement that any protest thereto be submitted within thirty days of its receipt.²⁰ VSS did not protest either proposed modification of its license within the requisite time frame.²¹ Therefore, VSS is deemed to have consented to the proposed modifications.²² Based upon our record in this matter, we conclude that it would be in the public interest to modify VSS's license for Station KNNF731 by deleting frequency pairs 896/935.8875 MHz and 899/938.4125 MHz.

8. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a) and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Station KNNF731, Las Vegas, Nevada, held by VSS Enterprises, LLC IS MODIFIED effective thirty days from the release of this *Order of Modification* by deleting frequency pairs 896/935.8875 MHz and 899/938.4125 MHz.

9. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested to VSS Enterprises Inc., P.O. Box 98138, 2800 Fremont Street, Las Vegas, Nevada 89193-8138.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁸ *VSS-ReadyMix Order*, 18 FCC Rcd at 6228 ¶ 8.

¹⁹ *Id.*

²⁰ 47 C.F.R. § 1.87(a).

²¹ 47 C.F.R. § 1.87(g)(1).

²² 47 C.F.R. § 1.87(H); *see also VSS-AAR Order*, 18 FCC Rcd at 1920 ¶ 4; *VSS-ReadyMix Order*, 18 FCC Rcd at 6228 ¶ 9.